RECENT IMPORTANT DECISIONS

ASSIGNMENTS—TRANSFER OF EXPECTANCY.—A, the apparent heir of his mother, executed a warranty deed conveying to defendants his expectancy in the realty of his mother. He died during her life, and after her death his children bring suit to have the deed cancelled as a cloud on their title. *Held,* that the relief prayed should be granted on the ground that the complainants were not bound by the warranty of the father, as they did not take as his heirs, but as the heirs of their grandmother, only tracing relationship through the father. *Johnson* v. *Breeding* (Tenn. 1916), 190 S. W. 545. A transfer by the heir of his expectancy is void at law, being the transfer of a mere contingency or possibility; see cases collected in 4 CYC. 15. In *Jackson* v. *Bradford,* 4 Wend. 619, the conveyance made by the heir in the lifetime of the ancestor was declared void at the suit of one who claimed under a judgment lien entered against the heir prior to the conveyance. In *Wheeler* v. *Wheeler,* 2 Metc. (Ky.) 474, it was held that as the conveyance was void the contract fell with it, and was no defence to an action by the grantor against the executor for the estate devised to him by the will. Where the conveyance is with warranty the grantor and all claiming through him are estopped to set up an after-acquired title. *Fairbanks* v. *Williamson,* 7 Me. 96. The assignment of an expectancy is valid in equity and will be enforced as a contract to convey whenever the expectancy ripens into a vested estate. *Elder* v. *Frazier* (Ia. 1916), 156 N. W. 182. But where, as in the principal case, the expectancy never becomes a vested estate in the grantor, the assignee takes nothing. *Donough* v. *Garland,* 269 Ill. 565, 109 N. E. 1015, Ann Cas. 1916E, 1238 and note. See also *Dungan* v. *Kline,* 81 Oh. St. 371, 90 N. E. 938.

AUTOMOBILES—INJURY TO UNLICENSED MOTORCYCLIST.—Plaintiff, an unlicensed motorcyclist, was run into by defendant, who was operating an automobile. Defendant contended that as plaintiff had no license, he was a mere trespasser on the highway, and entitled to protection only from wanton or malicious injury. *Held,* want of license, being in no way the proximate cause, does not preclude recovery of damages for injuries due to mere negligence. *Marquis v. Messier,* (R. I. 1917), 99 Atl. 527.

This is the accepted view in a majority of the states where this question has come up. *Stovall v. Co.,* 189 Ala. 576, 66 So. 577; *Armstead v. Lounsberry,* 129 Minn. 34, 151 N. W. 542; *Anderson v. Sterit,* 95 Kan. 483, 148 Pac. 635. But the law in Massachusetts has been in a rather peculiar state, from the passage of the old Sunday law down to the cases of *Chase* v. *Railroad Co.,* 208 Mass. 137, and *Bourne* v. *Whitman,* 209 Mass. 155. It has often been said that the early Massachusetts cases failed to distinguish between an illegal act as a condition, and an illegal act as a contributing cause. The cases did, however, draw this distinction in principle (*McGrath* v. *Merwin,* 112 Mass. 467; *Smith* v. *Railroad,* 120 Mass. 490), but this still left the situation unsatisfactory, for the courts could not see their way clear to hold violations of the statutes not a contributing cause. For instance,

in *McGrath* v. *Merwin,* supra, it was held that the fact that the plaintiff was working on Sunday was a contributing cause to his injury in that work, and in *Smith* v. *Railroad,* supra, where plaintiff was injured on one of defendant's railway crossings, the same was held of the fact that plaintiff was traveling on Sunday. So, following the lead of other states, KNOWLTON, C. J., in *Bourne* v. *Whitman,* supra, held that the test should not be: is the illegal *act* a contributing cause? but held that the *act itself* should be separated and analyzed, and the test be: is the illegal *element* of the act, considered by itself alone, a contributing cause? So if only that part of the act or conduct which is innocent affects the cause of action, the existence of an illegal element is immaterial. This applies only to that part of the statute requiring a personal license. This question has never yet been mooted in the Michigan Supreme Court, but will be if the Detroit justice court case of *Brause* v. *Adams Express Co.* goes up. As to that part of the statute requiring a license for the *machine,* it is usually held that failure to comply with the statute renders the machine and all its occupants trespassers on the highway, and entitled to no protection from injuries resulting from another's mere negligence. This was laid down very reluctantly in *Chase* v. *Railroad,* supra, but is now the established law in Massachusetts.

BILLS AND NOTES—EFFECT OF NEGOTIABLE INSTRUMENTS ACT ON USURY LAWS.—The West Virginia Code declares all notes given for usurious interest void as to the excess interest. The NEGOTIABLE INSTRUMENTS ACT provides that a holder in due course takes the instrument free from any defect in the title of his vendor. *Held,* the maker of the note may set up the usury in the inception of the note against a holder in due course. *Eskridge* v. *Thomas* (W. Va. 1916), 91 S. E. 7.

That the desired uniformity of laws concerning negotiable paper which has led so largely to the adoption of the uniform statute is to fail in part is shown by the group of decisions—of which the principal case is an illustration—concerning the effect of that statute upon other laws of the state such as the usury laws. Prior to its adoption it was generally held that where a usury statute declared a note usurious in its inception void, either as a whole or as to the excess interest, the note was void to the specified extent even in the hands of a bona fide purchaser for value. The courts reasoned that no vitality could be given to a void instrument merely by sale or exchange. 39 CYC. 1079 and cases cited. There was however some authority to the effect that it was the intention of the legislature in enacting the usury statute to make the instrument voidable as between the parties to the usury rather than absolutely void as an instrument; thus in effect substituting "voidable" for "void" in the statute. *Ewell* v. *Daggs,* 108 U. S. 145, 27 L. Ed. 682; *Myers* v. *Kessler,* 142 Fed. 730, 74 C. C. A. 62; *Gordon* v. *Levine,* 197 Mass. 263, 83 N. E. 861. The question presented by the principal case is whether in enacting §57 of the NEGOTIABLE INSTRUMENTS ACT to the effect that a holder in due course takes the instrument free from any defects in his vendor's title, and free from defenses available to prior parties among themselves, it was the intention of the legislature to repeal the voiding